

FILED
COURT OF APPEALS
DIVISION II

2012 MAY 18 PM 1:27

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY [Signature]
DEPUTY

State of Washington _____,)))))))))
Respondent,

Cause No. 42548-3-11

v.

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

Shelley Clark _____,
Appellant.

I, Shelley Clark, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1:

Ashley Lovin Testimony

A: I disagree with the court's decision to allow Ashley Lovin's testimony to be admissible at trial. (1) Drug use: Ashley Lovin denied using drugs on Oct. 1st, 2010, the day of the incident. Further direct and cross testimony she contradicted her testimony stating she used drugs the morning of Oct. 1st, 2010. She also admitted using drugs the day before the incident.

Reference:

Page# 109 line 20 denies use.

Page# 109 line 21 admits use the day prior.

Page# 112 line 4 admits use that day.

Page# 112 line 5 phrase used to admit use "yeah"

B: I take exception to witness claiming she was assaulted or harmed in anyway. She states that the defendant choked her in the kitchen, then in the living area, states defendant picked her up, "Clean off the ground." I dispute that by stating the obvious, I am 5'3" in height, and Ms. Lovin is substantially taller. She also states she, "wasn't fighting defendant." Then on further examination she states she was, "fighting her off."

Reference:

Page# 096 lines 4, 5, & 6. Witness states she was pushed into the kitchen.

Page# 097 lines 3-7. Witness states we were sitting, then states, "she almost lifted me off the ground by my neck."

Page# 099 lines 16-18 testimony of different locations of the alleged assault.

Summary:

The Testimony of Ashley Lovin is completely inconsistent and holds no substance of accuracy as she is blatantly inconsistent with her statements. Often times you are left wondering, "Which was it?" She perjured herself numerous times on stand and the testimony should not have been admissible based on that.

Witness testimony regarding her drug use and deception of when, how long ago, and where she last used drugs and such are equally as inadmissible as well. It makes her credibility shotty at best and if anything she caused extreme perjury under oath in front of a jury and caused extreme prejudice in my case.

Additional Ground 2

Prosecutor Mr. Bentsen

A: I disagree with the prosecutor's ability to quote statements that were not actual statements that were made. For example, he stated that Ms. Lovin's testimony is that the defendant was intoxicated. However, B.A.C. reading at the time of arrest was .09, which is not legally impaired in the State of Washington; or in the County of Cowlitz. Entirely, that statement should have not been allowed to be heard by the jury subsequently because of the fact that she is not a police officer, nor expert on the status of being able to tell or read testing indicating the level or performance of intoxication standards.

Reference:

Page# 071 line 8-12 Prosecutors quotes, "where's the Bitch hiding?" Then states or words to that effect. The prosecutor also states defendant was angry.

Summary

Defendant believes that it is improper for the prosecutor to be allowed to misquote and mislead the jury and judge on a felonious path that will lead to a manipulated win on the states part. It is prejudicial and shows a complete lack of regard for the defendant's constitutional rights. Nor, can the prosecutor adequately just "recall" off the top of his head whether the defendant was exactly intoxicated or angry or what she was feeling at the time because the prosecutor was not actually present at the time of the alleged offense.

Additional Grounds 3

Captain Johnson

A: There is inconsistent testimony between Captain Johnson and the witness Ashley Lovin. The officer described the location of the defendant as inside the residence. The witness contradicts the officer's testimony by stating that she was on the outside of the apartment upon officers arrival.

Reference:

Page# 144 lines 23-25 Captain Johnson states defendant was in the apartment.

Page# 145 lines 5-7 Witness states defendant was outside the apartment.

Page# 118 line 21& Page#119 lines 1-4 Witness states defendant was not inside the apartment.

Page# 122 line 10-13 when witness is asked regarding defendants location upon officer's arrival she confirms that defendant was not in the apartment.

Summary:

This contradictory testimony of the location of the defendant upon officer's response certainly questions the testimony and recollection of both Captain Johnson and Ashley Lovin. The fact that the officer and witness testimony are not similar in this instance is a big sign that this case is based on unreliable witnesses and an untruthful drug addict whom I am sure in her drug haze saw only what she wanted to believe in her mind.

Additional Grounds 4

Officer Bokma

A: I feel there is question with Officer Bokma's testimony and actions in regard to the cell phone, or recordings of "alleged cell phone messages" and voice identification reference:

Reference:

Page# 160 lines 1-5

Page # 161 lines 12-25

Later Mary Richard's witness arrived on scene; she provided a written statement and also made reply statements to Officer Bokma's questioning regarding cell phone messages on Voice Mail.

Police officer Bokma identifies a voice on the recording as that of Shelley Clark. He has not spoken to Ms. Clark on the phone and has had a brief conversation in person. Officer Bokma transferred the voice mails recordings from alleged cell phone to a CD or recording device.

Cell phone was never taken into evidence.

Officer Bokma is a Peace Officer not a voice recognition expert nor is he a qualified sound recording technician. His evidence collection again does not fall into par with the required standards of evidence collection.

There is much discussion outside of the jury between the Judge, Prosecutor and Defense Council regarding the voice recordings.

Reference:

Page# 166 line 3

Page# 204 line 17

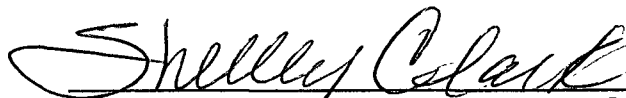
Summary:

The voice recordings were allowed into evidence even though they were recorded by someone who is not an expert. They were transferred from the cell phone that is not in evidence, and there is no chain of evidence control or recordation of such log that shows the chain of contact within the police unit for the evidence to not have been tampered with. The recording was inaudible at best, which led to really no 100% guarantee that the voice on there was even Shelley Clark. Also, when did Officer Bokma become a voice expert??? I was sure that we could never be 100% certain or even 75% certain of anyone's voice being a match unless it was done by computer analyst. That was certainly not done in this case. Where are Officer Bokma's credentials in this matter to be able to make those calls and be able to come to such determinations beyond a reasonable doubt to be making?

The next question is: since the recording is so inaudible, and there is no chain of custody log for the cell phone evidence, does this so called recording of a voice mail on a cell phone even exist?

The recordings are so inaudible at several times during the trial the judge had to interrupt and say how he "cannot understand what is being said," and "that it was garbled." There are several gaps in the voice recordings as well as the messages themselves. The voice recordings were recorded and re-recorded numerous times. These messages can be construed in many different ways and are a product of testimony as facts from something not in evidence, the cell phone. This is inflammatory and prejudicial.

Dated: 5/14/12


SHELLEY CLARK 753562
Signature
Print & DOC

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